

# Protocol for Managing Cultural Resources on Lands Administered by the Bureau of Land Management in Alaska

**Purpose.** This Protocol implements the Bureau of Land Management's (BLM) national cultural resources Programmatic Agreement (PA) in Alaska by describing how the Alaska State Historic Preservation Officer (SHPO) and the BLM will interact and cooperate under that agreement. The goal of this Protocol and the PA is to forge a more meaningful and productive partnership with the SHPO that will enhance the management of cultural resources under the BLM's jurisdiction.

**Relationship of this Protocol to existing MOU's, MOA's, and PA's.** The Alaska statewide cultural resources Memorandum of Understanding (MOU) signed August 20, 1984, will be terminated when the State Director notifies the SHPO that Alaska BLM has begun operating under the terms of the national PA.

The three PA's BLM-Alaska negotiated during 1988-1992 with the Advisory Council on Historic Preservation, the SHPO, and other respective parties would remain in effect and unmodified by the terms of the national PA. These three PA's are regarding: 1) Alaska Native Allotments (signed April 15, 1988); 2) Revocation of Withdrawals for Lands Selected by the State under the Alaska Statehood Act of 1958 (signed July 9, 1991); and 3) Treatment of Historic Properties that may be Affected by Yukon Pacific Corporation's Proposed Trans-Alaska Gas System Project (signed November 4, 1992).

Other PA's and MOA's may be developed when specific agreement documents are needed to define procedures for Section 106 compliance. When more than one federal agency is involved in an undertaking and BLM accepts lead responsibility for Section 106 compliance, the BLM and the SHPO may agree to follow the procedures of the national PA instead of developing a separate PA or MOA for the undertaking. When more than one federal agency is involved in an undertaking, and an agency other than BLM takes lead responsibility for Section 106 compliance, the national PA will not apply.

**Opportunities for Involvement in BLM Management Processes.** To encourage broader and more proactive participation by the SHPO in BLM's management activities, the BLM offers the following opportunities:

Planning Efforts. Each Field Office responsible for preparing a land use plan/resource management plan (RMP) or Environmental Impact Statement (EIS) will, when beginning its planning effort, invite the SHPO to participate in scoping for the purpose of identifying issues that should be addressed. The BLM will invite the SHPO to comment on any proposed cultural resource use allocations, whether these are

made in regional, local, or project plans. Field Offices will send all draft and final RMP's, EIS's, and activity plans which involve or affect cultural resources to the SHPO for review and comment.

Field Tours. The SHPO may participate in public field tours or other field examinations as requested by the SHPO or as invited by the BLM relating to land use planning efforts or specific undertakings whenever management of the cultural resources is involved.

Annual Work Plans. When Annual Work Plans are made final for a fiscal year (FY), each Field Office Manager and/or cultural resource program manager will, at the discretion of the SHPO, meet with the SHPO to discuss the major tasks planned by that Field Office that are likely to affect cultural resources. The BLM will make every effort to answer any questions the SHPO has and will welcome any suggestions the SHPO offers to facilitate the accomplishment of these tasks in ways that meet heritage preservation goals. Such meetings may be at the State Historic Preservation Office or the BLM Field Office, or elsewhere as agreed between the Field Office Manager and the SHPO.

Meetings. The SHPO is encouraged to meet with the Alaska State Office or a Field Manager at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by the SHPO. Such meetings may also be requested by the SHPO, and may include participation at a BLM Alaska Leadership Team meeting, so that historic preservation considerations can have a greater influence on large scale decisions and the cumulative effects of the more routine decisions.

Informal Consultation. The SHPO and Field Office personnel may consult informally at their discretion on specific undertakings or any aspect of the BLM's cultural resource management program. Such consultation is encouraged to take full advantage of the SHPO's experience with a broad range of agencies and historic preservation efforts statewide.

**Cooperative Efforts.** The BLM and the SHPO recognize the advantages of working together on a wide range of heritage preservation activities and will cooperatively pursue the following efforts:

Sharing and Facilitating the Use of Data: Each Field Office will ensure that records for cultural properties under its jurisdiction are entered into the statewide automated cultural resource database called the Alaska Heritage Resources Survey (AHRs).

The BLM and the SHPO will work together on an interagency cooperative data

sharing project to develop further Geographic Information System (GIS) capability for the AHRS, as needed, that will better serve the needs of agencies, academia, and the private sector. Both parties will ensure that all shared data will be compatible, so that all BLM submissions will be transportable into the AHRS. If funding is available in FY 98 and later years, the BLM will enter into a assistance agreement with the SHPO to facilitate development and cooperative use of this statewide AHRS database with GIS capabilities. Once the expanded AHRS with GIS capabilities is operational, allowing data entry through BLM Field Office computer terminals, and Field Office personnel are trained in its use, each Field Office will ensure that its cultural property records are entered into the AHRS-GIS database. This applies to cultural properties recorded by contractors as well as BLM personnel. Each Field Office will also ensure that the boundaries of areas inventoried for cultural properties are entered into the AHRS-GIS database. The BLM will not enter into the AHRS-GIS database information about traditional cultural places identified by Alaska Natives as sensitive.

The BLM and SHPO will collaborate on ways to synthesize and use BLM data to meet mutual goals. For example, BLM data might be used in developing historic contexts to assist in evaluating and treating cultural properties.

Public Outreach. The BLM and SHPO will continue to work together on various public outreach efforts, including, but not limited to, the following:

- *Project Archaeology:* Support Alaska Project Archaeology as a component of BLM's Heritage Education Program, with the goal of integrating the teaching of archaeological concepts and preservation ethics in Alaska schools statewide.
- *Archaeology Week:* Participate in Archaeology Week activities, including public presentations, field tours, and exhibits, where possible.
- *Adventures in the Past:* Interpret cultural properties appropriate for use as exhibits-in-place, when funds are available, consistent with BLM's Adventures in the Past initiative and emphasis on Heritage Tourism.
- *Gold Rush Centennial Task Force:* Participate in Gold Rush Centennial Task Force projects, including work on subcommittees involving interpretation, documentation, and other cultural resources issues.
- *Iditarod National Historic Trails:* Participate in Iditarod National Historic Trails projects, including interpretation, National Register of Historic Places documentation, and other Trail-related work, as appropriate.

**Public Participation and Native American Participation.** The BLM will solicit public

participation, including from Native Americans, as guided by BLM's land use planning and environmental review processes. In addition, the BLM will be guided by the following documents or authorities which include procedures for consultation with Alaska Native tribes and corporations following government-to-government conventions, as appropriate:

- Public Participation in Section 106 Review: A Guide for Agency Officials, issued by the Advisory Council on Historic Preservation, February 1989.
- BLM Manual 8160, Native American Coordination and Consultation.

- BLM Handbook H-8160-1, General Procedural Guidance for Native American Consultation.
- National Historic Preservation Act, Sections 101(d)(6) and 110(a)(2)(E)

**Case-By-Case Review.** The BLM will request the SHPO's review of the following kinds of undertakings at a time early enough in the planning process for the undertaking to allow the SHPO's recommendations to have a meaningful role in that process, including a reasonable expectation that such recommendations concerning historic preservation would be seriously considered and implemented, where feasible. To facilitate review, the BLM will provide the SHPO with the associated environmental document for all such undertakings.

1. Non-routine international and/or interagency projects or programs, as determined by either the BLM or the SHPO. Examples are interstate pipelines or transmission lines which involve multiple jurisdictions and require the preparation of Environmental Impact Statements.
2. Undertakings directly and adversely affecting properties on or determined eligible to the National Register of Historic Places in Alaska, including ones agreed to for the purposes of Section 106 as eligible to the National Register by Agency-SHPO agreement.
3. Undertakings when Council review is requested by the BLM, the SHPO, an Alaska Native tribe, a local government, an applicant for a BLM authorization, or a member of the public who has a concern for an undertaking's effect on specific historic properties.
4. Undertakings where the Council has requested the BLM or SHPO to become involved.
5. Land exchanges and sales exceeding 640 acres of public land when the BLM proposes to do less than a Class III survey to identify cultural properties. In such cases, the BLM will consult with the SHPO to ensure that the survey will adequately characterize past human use of the area and address relevant research questions.

**Determinations of Eligibility to the National Register.** The BLM is required to request the concurrence of the SHPO on all determinations of eligibility to the National Register of Historic Places. The SHPO will provide technical assistance as needed. For all undertakings, whenever a BLM cultural resource specialist concludes that a proposed undertaking will have a significant probability of impacting cultural resources, each site within the area of potential effect of the undertaking will be evaluated for National Register eligibility in consultation with the SHPO prior to making a

determination of effect. The level of documentation will, of course, vary with the complexity of the site but at a minimum will include the information necessary to fill out an AHRS form plus a discussion of the criteria under which the site is eligible or why it is not eligible. National Register Bulletin 16A should be consulted for guidance as well as BLM's 8110.3 manual section on Evaluating Legal Significance.

**Obtaining Specialized Expertise.** When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (e.g., architectural history, Native American oral traditions), it will obtain that expertise for the purpose of determining National Register eligibility, effects and treatment for the cultural properties in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies.

**Annual Report.** Each Field Office will send the SHPO an annual report of its cultural resources work performed during each federal fiscal year by December 10th of the following federal fiscal year. The report will contain items identified in Appendix 1 ("SHPO Annual Report"), a brief program overview, plus copies of the following documents:

1. New or updated Alaska Heritage Resources Survey Site forms for site discoveries or updates in a FY.
2. New or updated Assessment Reports done for Section 106 compliance in a FY. Note: Appendix 1 provides standards for these and other reports.
3. Project reports for work started and completed within a FY.
4. Status Reports for multi-year projects ongoing but not completed within a FY.
5. Final Reports for multi-year projects completed within a FY.
6. Copies of reports for work done by contractors or other non-BLM employees within a FY.
7. Treatment Reports documenting treatments to historic properties performed by BLM within a FY.

Following BLM's submission of its Annual Report, the SHPO will acknowledge each Field Office's submission with comments, as appropriate, within 60 days of receipt of the report. A copy of the correspondence would be sent also to the BLM State Office Cultural Heritage Specialist. If no comments are received from the SHPO within 60 days, the reports will be presumed acceptable.

**Resolving Issues.** If, at any time, the BLM or the SHPO question an action taken by the other under this Protocol, they will consult to resolve the issue. If the issue concerns an action taken by a Field Office, the questioning party will consult with the Field Manager to resolve it. If the issue cannot be resolved, the questioning party will request the Deputy Preservation Officer to assist in resolving it. If the issue still cannot be resolved, the Deputy Preservation Officer will refer it to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision.

If the BLM and SHPO do not agree on the National Register eligibility of a cultural property, the question will be referred to the Keeper of the Register for a final determination.

If a member of the public or an Alaska Native tribe objects at any time to the manner in which this Protocol is being implemented, the BLM and the SHPO will together consult with the objecting party to resolve the issue. If the BLM, SHPO, and objecting party are unable to resolve the objection, the BLM will refer the issue to the BLM Preservation Board. The BLM Preservation Board will provide recommendations to the State Director, who will make a final decision. In accordance with the 36 CFR 800 regulations, any member of an Alaska Native tribe or corporation or group, or the interested public may request the Council to review determinations made by the BLM or SHPO on a specific undertaking before the final decision has been made.

**Decertification or Suspension of Field Offices.** If a field office cannot demonstrate continued capability to operate under the national Programmatic Agreement or this Protocol, that office shall be decertified or suspended in accordance with procedures identified in the national PA. The field office would subsequently operate under regulations found at 36 CFR 800 until it can demonstrate to the satisfaction of the SHPO and Deputy Preservation Officer that it can resume operation in accordance with procedures identified in the national PA and this Protocol. When that occurs, the Deputy Preservation Officer will recommend that the State Director recertify the office, also in accordance with the national PA.

**Reviewing the Protocol.** The BLM and SHPO will consult every three years to review and update the Protocol, as may be needed.

**Amending the Protocol.** If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. Amendments will become effective when signed by both parties.

**Terminating the Protocol.** The BLM or the SHPO may terminate this Protocol by providing ninety days notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination. The Deputy Preservation Officer may request the assistance of the BLM

Preservation Board, National Conference of State Historic Preservation Officers, or the Council in the consultation. If the Protocol is terminated, the BLM will return to operating under the provisions of the Council's regulations found at 36 Code of Federal Regulations 800.

**Other State-Specific Procedures.** The BLM will be guided by procedures described in Bureau wide directives, including the BLM Manual 8100 series for the management of cultural resources. Also, if needed, BLM may develop state-specific manual supplements to incorporate policies issued by the Alaska State Director, new laws, and new regulations. The SHPO would be invited to participate in the development of all state-specific manual supplements.

**Appendices:**

1. SHPO Annual Report
2. Undertakings Not Subject to Further Section 106 Review

**Approved by:**

[signed by Tom Allen on 4/17/98]

Alaska State Director, Bureau of Land Management

Date

[signed by Judith E. Bittner on 4/17/98]

Alaska State Historic Preservation Officer

Date



## **Appendix 1**

### **SHPO Annual Report**

#### **What to submit**

- All reviews of actions completed during the year, including both on-the-ground surveys and actions reviewed without further survey ("desk clearances"). Each report should include a map showing the area surveyed or the area of the undertaking's potential impact.
- A brief description of and current status report on any non-106 inventory efforts, excavations, research projects, stabilization or restoration projects, or any other efforts involving cultural resources.
- A brief description of planned projects for the coming year.
- Completed AHRS site data, preferably in electronic format.

#### **Content of examination reports**

The following specifies minimum requirements for examination reports submitted as part of the annual report. In specific situations, additional information may be necessary or useful.

No specific format is required for examination reports. Individuals or offices may develop forms if they find them useful and if they otherwise meet the requirements of the protocol.

Multiple undertakings may be combined into a single report where the individual undertakings are located near enough to one another that it is logical and efficient to combine them into one records check and literature review.

#### **All reports**

Unless the information is not relevant to a particular report, all reports should contain:

1. BLM serial number
2. Environmental Assessment number
3. Date
4. Name of the applicant
5. Description (preferably a legal description) of the location of the action

6. Description of the proposed undertaking in sufficient detail so as to allow a reviewer a reasonable chance of determining the likelihood of and the extent of surface disturbance.
7. Name and signature of the individual completing the review

### Office reviews

The purpose of an office review is to document the rationale for not recommending on-the-ground survey. Provide whatever information is relevant and in sufficient detail so that a non-specialist can understand your reasoning.

Optional elements:

8. A review of existing data on cultural resources located in the area of the undertaking. At a minimum, this should usually entail consulting the AHRs database.
9. Past survey work done in the area.

Mandatory elements:

10. Conclusions. Explain the rationale supporting your recommendation.
11. Recommendations. An explicit recommendation regarding the need (or lack thereof) for on-the-ground survey, and any mitigating measures or stipulations that should be included in or attached to the proposed action.

### Field exams

In addition to documenting the work done in response to a specific undertaking, a field exam should provide enough detail to allow a future cultural resource specialist to determine if the completed inventory can be used to meet his/her needs.

12. Description of the area surveyed. At a minimum, provide a description of the extent and nature of ground cover so that the survey methodology can be evaluated.
13. Survey methodology.
14. Results of survey. Whether any sites were found, and if so, a description of those sites.
15. Impacts. Will discovered sites be disturbed by the proposed action, or can the action be modified to avoid impacts.

16. National Register eligibility. If impacts cannot be avoided, then are the sites eligible for the National Register? Summarize the significance of the site(s), citing one or more of the National Register Criteria listed in 36 CFR 60.4. Reference consultation with the SHPO regarding eligibility.

## **Appendix 2**

### **Undertakings Not Subject to Further Section 106 Review**

#### Purpose:

The purpose of the following list is to identify Bureau of Land Management activities which may meet the technical definition of "Undertaking" contained in Section 301(7) of the National Historic Preservation Act (NHPA), but which have little potential to affect historic properties. By mutual agreement of the parties signatory to this Protocol, undertakings identified as belonging to this class, through application of the review process set for in this Protocol, are exempt from further review under Section 106 of the NHPA.

#### Undertakings Not Subject to Further Section 106 Review:

1. Activities that involve less than one square meter (11 square feet) of cumulative ground disturbance, provided the activity is not taking place on a National Register listed or eligible property. Examples include many guiding permits.
2. Tenant-type maintenance of administrative sites, buildings, recreation sites, ranger vessels. Tenant-type maintenance is routine maintenance and repair of facilities, entailing no structural change or any change of form, function, or materials.
3. Activities taking place on glacial ice, permanent snow fields, tundra bogs, and slopes steeper than 30 degrees except in historic mining areas where adits or historic structures may be found.
4. Routine trail maintenance in previously inventoried areas.
5. Routine road maintenance in previously inventoried areas.
6. Activities in locations where previous natural or human disturbance has modified the landscape so extensively that the likelihood of finding cultural resources is negligible. A cultural resource survey may be needed to verify this condition, and to determine if the disturbance itself is of historic importance. Examples include expansion of vertical quarries, activities on actively-changing river courses that are carried out within active stream beds.
7. Heavy maintenance, reconstruction, or replacement of existing facilities in previously inventoried areas, provided that the facility has been determined ineligible

for listing on the National Register of Historic Places. Examples may include fish ladders, bridges and culverts, fences, cabins, and facilities in developed recreation sites.